

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **June 14, 2005**

AGENDA ITEM NO.: 12

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Zoning Ordinance Amendment – Section 35.1-22, Buildings, Uses & Lots, (j) County Boundary Lines.

RECOMMENDATION: Approval of the requested Zoning Ordinance Amendment.

SUMMARY: At the direction of the Planning Commission, the Planning Division drafted revisions to the Zoning Ordinance removing Section 35.1-22, Buildings, Uses & Lots, (j) County Boundary Lines. This code section currently prohibits buildings crossing the City/County boundary line. The Planning Commission recommended removing the prohibition from the Zoning Ordinance because:

- The proposed Zoning Ordinance Amendment would remove the prohibition of buildings crossing the City/County boundary line.
- The proposed Zoning Ordinance Amendment would promote regionalism and provide property owners with greater flexibility in developing their property.
- The *Comprehensive Plan 2002 – 2020* is supportive of the proposed Zoning Ordinance Amendment.
- Coordination between City and County staff can overcome and governmental issues associated with the proposed amendment.

Note: The City Attorney has suggested an alternative approach that would allow buildings to straddle the municipal boundary by Conditional Use Permit. Attached is a letter from the City Attorney and an alternative ordinance.

PRIOR ACTION(S):

April 28, 2005: Planning Division recommended approval of the Zoning Ordinance Amendment.
Planning Commission recommended approval (3-1) of the Zoning Ordinance Amendment (Commissioners Pulliam, Worthington and Barnes were absent).

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn/ 455-3902
Tom Martin/ 455-3909

ATTACHMENT(S):

- Ordinance
- PC Report
- PC Minutes
- Letter from City Attorney
- Alternative Ordinance

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-22 OF THE CITY CODE OF THE CITY OF LYNCHBURG, THE AMENDED SECTION RELATING TO THE CONSTRUCTION OF A STRUCTURE THAT WOULD BE SPLIT BY A COUNTY BOUNDARY LINE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 35.1-22 of the City Code of the City of Lynchburg be, and the same is hereby amended and reenacted as follows:

Section 35.1-22. Buildings, uses and lots.

(a) Building lot required. Every building or structure hereafter erected shall be located on a lot as herein defined. Where more than one (1) building is erected on a single lot, open spaces or courts shall be provided between buildings as provided herein.

(b) Street frontage required. No permit shall be issued for any land use or structure unless the lot on which such land use is to be established or such structure is to be built has frontage providing access on at least one (1) dedicated, improved street extending across the entire front of the lot where right-of-way extends on the property line with at least twenty (20) feet of pavement with fifty (50) feet of right-of-way, or unless the lot is an existing lot of record on 9/12/89 and has a perpetual unobstructed easement of access at least thirty (30) feet wide to such a street to serve one (1) single-family dwelling or duplex residence . This requirement may be waived by the city council in the case of planned unit developments, cluster commercial developments, traditional neighborhood developments, and townhouse lots for sale complexes where adequate public and private access is provided to such land use or structure.

(c) Reduced street frontage requirements. A permit may be issued for a land use or structure on a lot with less than the required street frontage if:

- (1) The lot fronts on a cul-de-sac, in which case the minimum street frontage shall be thirty (30) feet; or
- (2) The lot is a flag lot meeting the requirements of Section 24.1-28.1 Flat lots.

(d) Yard and open space. No yard or open space required or provided about any building on one (1) lot for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for a building on any other lot.

Where more than one (1) building is erected on a lot, an open space or court shall be provided between the buildings. Such open space shall be equal in width to twice the width of a side yard required for the district in which the buildings are located. No dwelling, however, shall be erected in the rear of another building on the same interior lot.

(e) Reduction or subdivision of lots. No lot shall be subdivided or reduced in area in such a way that existing lots or structures are brought into nonconformance with the regulations of this ordinance.

(f) Lots under water or within the one hundred (100) year floodplains. No more than ten percent (10%) of the minimum area requirements of a lot, or the area used to calculate floor area ratios or permitted number of dwelling units, may be fulfilled by land which is under water, in marshland or in the one hundred (100) year floodplain as determined by the department of public works, City of Lynchburg.

(g) New buildings on lots less than the required minimum area. A permit may be issued for the erection of a building for a permitted use on a lot existing before the adoption of this ordinance, notwithstanding that the area or dimensions of such lot are less than that required for the district in which such lot lies, providing:

- (1) That no use other than a single-family dwelling will be permitted;

(2) That all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with; and

(3) That the owner of such a lot did not own other lots contiguous thereto at the time of the adoption of this ordinance. If the latter is the case, such lot, or so much thereof as may be necessary, shall be combined with the first named lot to make one (1) or more conforming lots, whereupon a permit may be issued, but only for such combined lots. Where the required area of dimensions of lots are changed by an amendment of this zoning ordinance, any legal lot existing at that date, and made nonconforming by such amendment, may be built upon within the limits of the two (2) conditions mentioned above in this paragraph.

(h) Parts of lot not counted toward area requirements. For any lot created by subdivision subsequent to adoption of this ordinance, no part of that lot less in width than one-third (1/3rd) the minimum requirement for the district in which it is located shall be counted as part of the required minimum lot area.

(i) Minimum dwelling unit size. See city "housing standards ordinance" of the city code.

~~(j) County boundary lines. In no case will a permit be issued to build a structure which would be split by a county boundary line.~~

2. That this ordinance shall become effective on its adoption.

Adopted:

Certified: _____
Clerk of Council

075L

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: April 27, 2005
Re: **ZONING ORDINANCE AMENDMENT – Section 35.1-22, Buildings, Uses & Lots, (j) County Boundary Lines**

I. PETITIONER

The City of Lynchburg, Planning Commission, 900 Church Street, Lynchburg, VA 24504

Representative: Mr. Tom Martin, AICP, City Planner, Planning Division, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The proposed amendment would have the potential to affect all properties bordering Bedford & Campbell Counties.

Property Owners: N/A

III. PURPOSE

The purpose of the Zoning Ordinance amendment is to remove the prohibition of buildings crossing the City/County Boundary Line.

IV. SUMMARY

- The proposed Zoning Ordinance amendment would remove the prohibition of buildings crossing the City/County Boundary Line.
- The proposed Zoning Ordinance amendment would promote regionalism and provide property owners with greater flexibility in developing their property.
- The proposed Zoning Ordinance amendment would require coordination between City and County staff and the development of “policy” for services such as permitting, inspections, Zoning, taxation and emergency response.
- The *Comprehensive Plan 2002 – 2020* is supportive of the proposed Zoning Ordinance amendment.

The Planning Division recommends approval of the Zoning Ordinance Amendment.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends promoting regional cooperation in issues related to land use, growth and development. Land use decisions and planning in the surrounding counties have and will continue to have an impact on how the City approaches, land use, transportation, utility extensions and environmental management. **(5.7, Regional Land Use Issues)**
2. **Zoning.** The language prohibiting buildings crossing the City/County boundary line was established with the adoption of the Zoning Ordinance on December 12, 1978.
3. **Impact.** At the request of the Planning Commission, the Planning Division has researched and prepared Zoning Ordinance amendments that would remove the prohibition of buildings crossing the City/County Boundary Line.

The areas of the City that would be affected are those that border Bedford & Campbell Counties. The border between the City and Amherst County is not relevant since the two localities are divided by the James River.

Planning Division staff has discussed the proposed amendments with representatives from offices of the City's Building Inspections, Fire Marshal, Emergency Communications, Commissioner of the Revenue and the City Assessor. A meeting was also conducted with representatives from Bedford & Campbell Counties on April 12, 2005.

Based upon the issues identified the Planning Division proposes that the City of Lynchburg develop the following “policy” with Bedford & Campbell Counties:

1. The locality where the greatest percentage of the building is located will have jurisdiction over the following:
 - Building Permits and Inspections
 - Zoning (Building Only)
2. Emergency response will be provided by the jurisdiction in which the driveway is located.
3. Real Estate taxes will be based upon the proportion of the building located in the City.

The only issue that is not easily addressed is how to deal with business taxes and machine and tool taxes. The City of Lynchburg and Campbell County use a “business license” tax based upon gross receipts. These taxes can be easily divided by using the proportion of the building located in each locality. However, Bedford County uses a “merchant capital” tax based upon inventory at the beginning of each year. The Commissioner of the Revenue will need to coordinate this issue with Bedford County.

VI. PLANNING DIVISION RECOMMEND MOTION:

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending Section 35.1-22, Buildings, Uses and Lots by deleting paragraph (j) to remove the prohibition of buildings crossing the City/County Boundary Line.

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. R. Douglas Dejarnette, Fire Marshal
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. Kent White, Senior Planner
Ms. Erin Bryant, Environmental Planner
Mr. Mitch Nuckles, Commissioner of the Revenue

VII. ATTACHMENTS

1. Proposed Zoning Ordinance Amendment

Sec. 35.1-22. Buildings, uses and lots.

(a) Building lot required. Every building or structure hereafter erected shall be located on a lot as herein defined. Where more than one (1) building is erected on a single lot, open spaces or courts shall be provided between buildings as provided herein.

(b) Street frontage required. No permit shall be issued for any land use or structure unless the lot on which such land use is to be established or such structure is to be built has frontage providing access on at least one (1) dedicated, improved street extending across the entire front of the lot where right-of-way extends on the property line with at least twenty (20) feet of pavement with fifty (50) feet of right-of-way, or unless the lot is an existing lot of record on 9/12/89 and has a perpetual unobstructed easement of access at least thirty (30) feet wide to such a street to serve one (1) single-family dwelling or duplex residence. This requirement may be waived by the city council in the case of planned unit developments, cluster commercial developments, traditional neighborhood developments, and townhouse lots for sale complexes where adequate public and private access is provided to such land use or structure.

(c) Reduced street frontage requirements. A permit may be issued for a land use or structure on a lot with less than the required street frontage if:

(1) The lot fronts on a cul-de-sac, in which case the minimum street frontage shall be thirty (30) feet; or

(2) The lot is a flag lot meeting the requirements of Section 24.1-28.1 Flat lots.

(d) Yard and open space. No yard or open space required or provided about any building on one (1) lot for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for a building on any other lot.

Where more than one (1) building is erected on a lot, an open space or court shall be provided between the buildings. Such open space shall be equal in width to twice the width of a side yard required for the district in which the buildings are located. No dwelling, however, shall be erected in the rear of another building on the same interior lot.

(e) Reduction or subdivision of lots. No lot shall be subdivided or reduced in area in such a way that existing lots or structures are brought into nonconformance with the regulations of this ordinance.

(f) Lots under water or within the one hundred (100) year floodplains. No more than ten percent (10%) of the minimum area requirements of a lot, or the area used to calculate floor area ratios or permitted number of dwelling units, may be fulfilled by land which is under water, in marshland or in the one hundred (100) year floodplain as determined by the department of public works, City of Lynchburg.

(g) New buildings on lots less than the required minimum area. A permit may be issued for the erection of a building for a permitted use on a lot existing before the adoption of this ordinance, notwithstanding that the area or dimensions of such lot are less than that required for the district in which such lot lies, providing:

(1) That no use other than a single-family dwelling will be permitted;

(2) That all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with; and

(3) That the owner of such a lot did not own other lots contiguous thereto at the time of the adoption of this ordinance. If the latter is the case, such lot, or so much thereof as may be necessary, shall be combined with the first named lot to make one (1) or more conforming lots, whereupon a permit may be issued, but only for such combined lots. Where the required area of dimensions of lots are changed by an amendment of this zoning ordinance, any legal lot existing at that date, and made nonconforming by such amendment, may be built upon within the limits of the two (2) conditions mentioned above in this paragraph.

(h) Parts of lot not counted toward area requirements. For any lot created by subdivision subsequent to adoption of this ordinance, no part of that lot less in width than one-third (1/3rd) the minimum requirement for the district in which it is located shall be counted as part of the required minimum lot area.

(i) Minimum dwelling unit size. See city "housing standards ordinance" of the city code.

~~(j) County boundary lines. In no case will a permit be issued to build a structure which would be split by a county boundary line. (Ord. No. O-78-352, 12-12-78; Ord. No. O-89-248, § 1, 9-12-89; Ord. No. O-98-013, 2-10-98)~~

Consideration of amending Sec. 35.1-22. Buildings, uses and lots, (j) County Boundary Lines of the Zoning Ordinance to allow structures to cross the City / County boundary line. The Zoning Ordinance currently prohibits structures from being split by the City / County Boundary Line. The proposed amendment would affect all properties adjacent to the City Limits. Copies of the proposed amendment may be viewed or obtained from the Planning Division, 2nd Floor City Hall, 900 Church Street.

Mr. Martin addressed the Commission saying that as a result of a directive from them from several meetings ago, the City staff had researched the possibility of allowing structures to cross the city/county boundary lines, which would result in an Ordinance amendment if approved. He added that the staff had met with representatives from the various City departments that would be affected, as well as with representatives from the Planning Departments of Bedford and Campbell Counties. He continued that they had found no reason not to remove the prohibition of buildings crossing the boundary lines, and added that the Comprehensive Plan encouraged regional cooperation between the City and the surrounding counties. Mr. Martin said if the prohibition of buildings crossing the city/county boundary lines was approved, there would need to be some policy decisions made on behalf of the City and the Counties. He detailed the guidelines that had been worked out as follows:

- Building permits and inspections would be issued in the locality where the greatest portion of the building is located.
- Zoning would be determined by the jurisdiction where the greatest portion of the building is located, and based on what occurs in the building.
- Emergency response would be provided by the jurisdiction in which the driveway is located, which is simply a matter of whose 911 system the address is coded in.
- Real Estate taxes would be based on the percentage of the building located in each jurisdiction.
- Mr. Martin explained that Bedford County was on a Merchant Capital system and Campbell County used a Business License tax, which was the system Lynchburg utilized. He continued by noting that there would be no issue between the City and Campbell County and the taxes would be split based on the percentage of property in each locality. He added that the Commissioner of Revenue of Bedford County and the Commissioner of Revenue of Lynchburg, Mitch Nichols, worked out a tentative agreement. Mr. Martin told the Commissioners that if the cash register was located in the County, they would be taxed based on a Merchant's Capital Tax, if in the City, they would be taxed based on the Business License Tax. He explained that the equipment and tools taxes would be divided based on where the equipment was located. He said this was the simplest solution to the issue, and added that the devil would be in the details on how it was coordinated between the various agencies and jurisdictions. Mr. Martin told the Commission that joint staff reviews of the projects would be conducted in order to work out any issues during the site plan review process.

Mr. Martin concluded by noting that the Planning Division recommended amending section 35.1-22 to delete Paragraph J, which prohibited the buildings crossing the city/county boundary line.

Chair Dahlgren expressed his concern about the Merchant Capital tax between Bedford County and the City of Lynchburg. He said car dealers were known for moving their inventories and he was afraid there could be a similar situation here with an industrial site moving equipment from one jurisdiction to the other. He said until there was a resolution for the issue he could not support the amendment.

Mr. Martin said this was the only issue that was not easily addressed. He said the Commissioners of Revenue for Bedford County and the City of Lynchburg worked out an agreement, and this was what they had to offer. He said if the City wanted to promote regionalism and make it easier for property owners to get the best use of their land, the simplest way to do that was to remove prohibition.

Commissioner Hamilton, as an example, used the proposed Wards Crossing West shopping center, which was ultimately turned down by City Council. She asked if since the driveway of that proposed development was intended to be in the City, with the building in Campbell County, would the City have been responsible for emergency services.

Mr. Martin explained that if the buildings of that proposed development had crossed the City/County boundary lines, then the City would have been responsible for emergency services. However, he added, in their proposal, the buildings would have all been constructed in Campbell County; therefore, the County would have been responsible for emergency services, not the City.

Commissioner Bacon said Bedford County could not be expected to change its way of taxing because it did not suit the City. She said they needed to find a way that would come as close to getting along with them as possible.

Commissioner Flint said it seemed to be more of a concern for Bedford County than for the City. He asked if Bedford and Campbell Counties had any type of prohibition against building across the county line.

Mr. Martin responded that they did not have any type of prohibition against building across the county line. He added that both counties indicated that it did not happen that frequently, but when it did happen they worked out the issues.

Commission Hamilton said it would be a shame not to allow construction across boundary lines due to discrepancy with the taxes. She said she assumed that people would be honest about the tax issue. She said she was not sure there could be a more stringent way to set that up unless there it was on a case-by-case basis.

Commissioner Bacon said if the two localities had worked together and this was the best solution they could come up, then she thought the petition should be approved.

After discussion Commissioner Hamilton made the following motion, which was seconded by Commissioner Bacon and passed by the following vote:

“That the Planning Commission recommends to City Council approval of amending Section 35.1-22, Buildings, Uses and Lots by deleting paragraph (j) to remove the prohibition of buildings crossing the City/County Boundary Line.”

AYES:	Bacon, Flint, Hamilton	3
NOES:	Dahlgren	1
ABSTENTIONS:		0
ABSENT:	Barnes, Pulliam, Worthington	3



The City of Lynchburg, Virginia

CITY HALL, 900 CHURCH STREET, LYNCHBURG, VIRGINIA 24504 • (434) 455-3980
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OFFICE OF THE CITY ATTORNEY

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JOYCE M. COLEMAN
SENIOR ASSISTANT CITY ATTORNEY

ELEANOR A. PUTNAM DURN
ASSISTANT CITY ATTORNEY

SUSAN L. HARTMAN
ASSISTANT CITY ATTORNEY

May 31, 2005

To The Honorable City Council
Lynchburg, Virginia

Re: Construction of Structures that would be Split by County Boundary Lines

Dear Council:

Section 35.1-22 (j) of the zoning ordinance prohibits the construction of a structure that would be split by a county boundary line. It has been recommended that the zoning ordinance be amended to remove this prohibition. Removing the prohibition would promote regionalism and provide property owners with greater flexibility in the development of their property. However, removing the current prohibition will require the City and adjoining counties to work together to resolve such issues as the enforcement of the Uniform Statewide Building Code; enforcement of local zoning ordinances; the assessment of real estate, business license and machinery and tools taxes; provision of emergency response service; and, similar issues.

The amendment to the zoning ordinance that was considered by the Planning Commission would amend Section 35.1-22 (j) by simply removing the language that prohibits the construction of a structure which would split by a county boundary line. Removal of this language will allow such structures to be built as a matter of right. When such structures are built, staff for the City and adjoining counties will have to work together to resolve and coordinate the issues created by the construction of such a structure.

Instead of simply removing the current prohibition from the zoning ordinance, another option would be to allow such structures to be built with a conditional use permit. Requiring a conditional use permit would allow City Council to review the proposed structure to make sure it was consistent with the City's zoning ordinance and would give City Council an opportunity to make sure all of the issues surrounding the construction of the structure have been resolved prior to the issuance of a building permit. An alternative ordinance providing that a structure which would be split by a county boundary line is permitted by a conditional use permit is also offered for Council's consideration.

Respectfully submitted,

Walter C. Erwin

Cc: L. Kimball Payne, City Manager
Rachel Flynn, Director, Community Planning and Development
Tom Martin, City Planner

ALTERNATIVE ORDINANCE

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-22 OF THE CITY CODE OF THE CITY OF LYNCHBURG, THE AMENDED SECTION RELATING TO THE CONSTRUCTION OF A STRUCTURE THAT WOULD BE SPLIT BY A COUNTY BOUNDARY LINE.

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(b) Street frontage required. No permit shall be issued for any land use or structure unless the lot on which such land use is to be established or such structure is to be built has frontage providing access on at least one (1) dedicated, improved street extending across the entire front of the lot where right-of-way extends on the property line with at least twenty (20) feet of pavement with fifty (50) feet of right-of-way, or unless the lot is an existing lot of record on 9/12/89 and has a perpetual unobstructed easement of access at least thirty (30) feet wide to such a street to serve one (1) single-family dwelling or duplex residence . This requirement may be waived by the city council in the case of planned unit developments, cluster commercial developments, traditional neighborhood developments, and townhouse lots for sale complexes where adequate public and private access is provided to such land use or structure.

(c) Reduced street frontage requirements. A permit may be issued for a land use or structure on a lot with less than the required street frontage if:

(1) The lot fronts on a cul-de-sac, in which case the minimum street frontage shall be thirty (30) feet; or

(2) The lot is a flag lot meeting the requirements of Section 24.1-28.1 Flat lots.

(d) Yard and open space. No yard or open space required or provided about any building on one (1) lot for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for a building on any other lot.

Where more than one (1) building is erected on a lot, an open space or court shall be provided between the buildings. Such open space shall be equal in width to twice the width of a side yard required for the district in which the buildings are located. No dwelling, however, shall be erected in the rear of another building on the same interior lot.

(e) Reduction or subdivision of lots. No lot shall be subdivided or reduced in area in such a way that existing lots or structures are brought into nonconformance with the regulations of this ordinance.

(f) Lots under water or within the one hundred (100) year floodplains. No more than ten percent (10%) of the minimum area requirements of a lot, or the area used to calculate floor area ratios or permitted number of dwelling units, may be fulfilled by land which is under water, in marshland or in the one hundred (100) year floodplain as determined by the department of public works, City of Lynchburg.

(g) New buildings on lots less than the required minimum area. A permit may be issued for the erection of a building for a permitted use on a lot existing before the adoption of this ordinance, notwithstanding that the area or dimensions of such lot are less than that required for the district in which such lot lies, providing:

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(2) That all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with; and

(3) That the owner of such a lot did not own other lots contiguous thereto at the time of the adoption of this ordinance. If the latter is the case, such lot, or so much thereof as may be necessary, shall be combined with the first named lot to make one (1) or more conforming lots, whereupon a permit may be issued, but only for such combined lots. Where the required area or dimensions of lots are changed by an amendment of this zoning ordinance, any legal lot existing at that date, and made nonconforming by such amendment, may be built upon within the limits of the two (2) conditions mentioned above in this paragraph.

(h) Parts of lot not counted toward area requirements. For any lot created by subdivision subsequent to adoption of this ordinance, no part of that lot less in width than one-third (1/3rd) the minimum requirement for the district in which it is located shall be counted as part of the required minimum lot area.

(i) Minimum dwelling unit size. See city "housing standards ordinance" of the city code.

(j) County boundary lines. ~~In no case will a permit be issued to build a structure which would be split by a county boundary line.~~ A structure which would be split by a county boundary line shall be permitted by a conditional use permit under the regulations of Section 35.1-15 and Article X of the zoning ordinance.

2. That this ordinance shall become effective on its adoption.

Adopted:

Certified:

Clerk of Council